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IN THE

United States Supreme Court

No. 964

NORMAN BENNETT

Petitioner

vs.

FORD MOTOR COMPANY

Respondent

PETITION FOR WRIT OF CERTIORARI

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Attorney for Petitioner

IN THE

United States Supreme Court

NORMAN BENNETT

Petitioner

vs.

FORD MOTOR COMPANY

Respondent

Petition for Writ of Certiorari

I.

Petitioner seeks a review of the decision of the United States Court of Appeals for the District of Columbia Circuit, dated November 7, 1963. Petition for rehearing was denied on December 27, 1963. Thereafter, this Court, on March 19, 1964, extended the time for filing this petition until April 1, 1964.

II.

Jurisdiction of this Court is based on 28 U.S.C. §1254. Jurisdiction originally in the United States District Court for the District of Columbia was based on 28 U.S.C. §§1338, 1400.

III.

The questions presented are:

1. Was petitioner denied the right to trial by jury of factual issues in a patent infringement case in which trial by jury had been demanded?

2. Where other Federal Circuits have held that factual issues in patent infringement cases should be submitted to a jury, where jury trial is demanded, has the District of Columbia Circuit departed from this standard?

IV.

This case involved a suit for patent infringement of an automobile bumper, patented by petitioner. This bumper involved safety factors of great public importance in its method of absorbing and dissipating shocks of impact. (Joint Appendix, 11-19, 113.) The patent, inter alia, described the bumper as "substantially resilient." Petitioner's expert witness, as well as petitioner, himself an engineer, testified that respondent's bumpers embodied the elements of petitioner's patent and their operation was the same as with petitioner's patent. (J.A. 47-53, 112-123.) Respondent produced its bumpers after having received correspondence from petitioner describing his patent. (J.A. 53-4.)

This testimony also showed respondent's bumper to be resilient, like petitioner's patent. (J.A. 26-8, 35, 42, 47, 55, 74, 109-112, 122-6, 128, 132-8.)

Despite this positive testimony, and with *no* contradictory evidence, the Court ruled that respondent's bumper was not resilient, and directed a verdict for respondent. (J.A. 184-6.)

V.

Thus the trial court took away from the jury its function of determining the factual issue of infringement. This conflicts with the ruling of this Honorable Court, in *United*

States v. Esnault-Pelterie, 299 U.S. 201, 205, as well as the rulings of other circuits, in *Moist Cold Refrig. Co. v. Lou Johnson Co.*, 249 F.2d 246, 255-6, and *Hansen v. Safeway Stores, Inc.*, 238 F.2d 198, 200. Moreover, the fact that steel structures, such as these bumpers, are resilient has been judicially recognized in the Ninth Circuit, in *Reinharts, Inc. v. Caterpillar Tractor Co.*, 85 F.2d 628, 634.

This action of the trial court, affirmed in a Per Curiam opinion, thus operated:

a. To deprive petitioner of his Constitutional right to a trial by jury; and

b. To conflict with decisions of this Court and other Federal Circuits that such issues of fact in a patent infringement case, should be submitted to a jury.

Wherefore, petitioner prays that this court accept for review the action of the Court of Appeals in this case.

Respectfully submitted,

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17509

NORMAN BENNETT, APPELLANT

v.

FORD MOTOR COMPANY, APPELLEE

Appeal from the United States District Court
for the District of Columbia

Decided November 7, 1963

Messrs. Albert Brick and *Elliott I. Pollock*, with whom *Mr. Samuel Intrater* was on the brief, for appellant.

Mr. Ralph L. Chappell, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Messrs. Leo A. Rosetta* and *Laidler B. Mackall* were on the brief, for appellee.

Before WASHINGTON, BURGER and MCGOWAN, *Circuit Judges*.

PER CURIAM: This is an appeal from a judgment of the District Court in a patent infringement case, in which the court directed a verdict for the appellee.[1] Appellant, in

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[1] The patent allegedly infringed is No. 2,585,530, issued to Norman Bennett on February 12, 1952.

addition to challenging the directed verdict, urges that it was error to exclude reports of certain tests and the testimony of proffered witnesses on engineering issues and on damages.

We have carefully examined all of the claims of error in light of the record and find no error warranting reversal.

Affirmed.

CERTIFICATE OF SERVICE

Copy of the foregoing petition mailed on April 1, 1964, to Bacon & Thomas, Shoreham Building, and Steptoe & Johnson, Shoreham Building, Washington, D.C., attorneys for Respondent.

SAMUEL INTRATER